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10/654,233

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Mario M. de la Guardia

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SUITE 1000
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ATLANTA, GA 30309-3915

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1619

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|---|--|
| Office Action Summary | Application No. 10/654,233 | Applicant(s) DE LA GUARDIA ET AL. | |
| | Examiner JYOTHSNA A. VENKAT | Art Unit 1619 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/18/09 has been entered.

Status of claims

Claims 1-9 are withdrawn from consideration as being drawn to non-elected invention (election without traverse dated 3/5/07). Claims 10-26 are currently examined in the application.

Claim Rejections - 35 USC § 103

Claims 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of WO 93/00882 ('882) and 6,231,844('844) and 4,871,530('530).

WO teaches neutralizing hair by applying hair relaxer and then applying neutralizing hair. These steps are known in the art. See paragraph bridging pages 8-9. See page 12, where the neutralizer is applied to hair and left on the hair. The neutralizer is used with chemical like calcium hydroxide, enzyme relaxers, and guanidine hydroxide. All these agents are known as "no lye relaxers". The neutralizer product has acid and surfactant. See page 13 and table 1. The difference between WO document and instant application is WO document does not teach applying neutralizer composition in the form of mousse, which has propellant. Patent '844 teaches hair mousse compositions having surfactant, propellant. See the abstract, col.1, lines 44 et seq, see col.3, lines 5-25, see col.3, lines 30-35 for surfactant, see col.5, lines 50 et seq and

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col.6, line s1-26 for propellant. Patent at col.6, line 33 suggests that pH adjusters can be added to compositions, See col.9, lines 50-52 also suggests that acids can be included in the compositions. Patent '844 also teaches at col.6, lines 22-25 that the propellants are contained under pressure in a suitable vessel such as pressed dispensing device, which is well known in the art. This meets the claimed requirement of claim 23. See also col.11, lines 65 through col.12. Patent '844 does not teach the limitation of claim 22. Patent '530 also teaches foaming compositions having propellant and surfactant. See the abstract, see col.1, lines 15-21, see col.2, lines 47-58, and see paragraph bridging col.s 4-5 for various propellants and patent teaches mixtures of propellants. Patent at paragraph bridging col.s 15-16 suggests that other propellants can be used, which includes carbon dioxide. See also col.15, lines 35-53. See col.3, lines 15-55 for surfactant. Patent at col.14, lines 44-51 teaches that these foaming compositions can be used after permanent waving.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to relax the hair and neutralize the hair taught by WO document and modify the neutralizing step using the hair mousse using surfactant, propellant and acid taught by patent '844 and use it after waving since patent '530 teaches analogous foaming compositions having the combination of surfactant, propellant can be applied to hair after hair is relaxed (waving). One of ordinary skill in the art would be motivated to use the mousse compositions after the hair is treated with a relaxing agent since hair mousse compositions provide good style, good feel to the hair and less flaking tendency. This is prima facie case of obviousness.

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Response to Arguments

Applicant's arguments filed 5/18/09 have been fully considered but they are not persuasive.

Applicants' argue:

“The '844 reference does not pertain to methods for neutralizing relaxed hair. As such, the '844 reference does not teach or suggest compositions that can be used as neutralizers for applying to relaxed hair and fails to teach or suggest that a mousse composition could be formulated and applied as a neutralizer to relaxed hair. In support of the proposed modification to the neutralizing step of the '882 reference, the Examiner identifies an excerpt from the '844 reference which states that hair mousses are formulated for the purpose of styling, setting, and arranging, or for other purposes such as shampooing, conditioning, treating, dyeing, and combinations thereof. Presumably in an effort to broaden the scope of the '844 reference's disclosure, the Examiner concludes on page 5 of the Office Action that hair styling is the same as straightening or relaxing hair and therefore the '844 reference clearly teaches that mousse can be used for relaxing hair. It is well established that the scope of a reference's disclosure must be taken on its face and, to that end, no where does the '844 reference state that styling as referred to in the reference is the same as straightening or relaxing hair or that mousse can be used for relaxing hair. The Examiner's attempt to broaden the scope of the '844 reference is

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tantamount to an impermissible hindsight reconstruction of the art and, once again, relies upon the Applicant's own disclosure as a blueprint for piecing together prior art in an effort to defeat patentability. Moreover, as further indicated on page 5 of the Office Action, the Examiner's conclusion regarding the scope of the '844 reference's teachings is provided as support for a finding that the mousse of the '844 reference can be used for relaxing hair, whereas the method of Applicants' claims utilize mousse as neutralizer to be applied to hair that has already been treated with a relaxing agent. Thus, the Examiner's stated reliance on the '844 reference still fails to provide the requisite motivation for one of ordinary skill in the art to utilize a mousse as a neutralizer”.

In response to the above argument, the primary reference WO ‘882 teaches neutralizing rinse for chemically relaxing hair. WO ‘882 at page 6, ll 9-10 teaches that conventional relaxer system employ shampoo as the neutralizer. WO document teaches applying a relaxer and then applying the product as neutralizer rinse at page 10, ll 22-23 and at page 10, ll 25-27 teaches neutralizing product to achieve the function of neutralizing alkaline residue. Instant specification at page 5, last paragraph defines that “ neutralize “ denotes a post-relaxer treatment, whereby residual alkalinity is eliminated from hair. WO document teaches neutralizer rinse but not a mousse for neutralizing hair. WO at page 12, ll 23-35 teaches:

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This invention and process can be used in conjunction with any alkaline reducing agents used in the straightening and permanent wave processes. It can be used with chemicals in the category of sodium hydroxide, potassium hydroxide, guanidine hydroxide, lithium hydroxide, calcium hydroxide, amino hydroxide, ammoniated amino hydroxide, enzyme relaxers and the like. The chemical agents used in permanently altering the structure of the hair and the subsequent damage incurred using these agents and by extensive rinsing and manipulation of the hair during the shampooing further damages the hair and reduces the effectiveness of the smoothing and shaping technique while the relaxer or straightener is on the hair.

WO document teaches the claimed step a and also teaches the limitation of claim 14 since guanidine hydroxide , amino hydroxide and enzyme relaxers are “ no lye ‘ relaxing agents. WO document teaches neutralizing rinse comprising water, acid and surfactant. See page 14, table I. This product has acid, surfactant (wetting agent and laureth -23) and water. Wetting agent and Laureth-23 belong to non-ionic surfactants. WO document does not teach neutralizing product in the form of mousse or having propellant. However, patent ‘844 teaches hair mousse using non-ionic surfactants, water and propellant and patent ‘844 teaches hair mousse for good style control. Regarding applicants’ arguments that patent ‘844 does not teach as a “neutralizer”, one of ordinary skill in the art would modify the neutralizer of WO document and use in the form of mousse , which has surfactant, acid and propellant with the reasonable expectation of success that the claimed product not only neutralizes relaxed hair but also provide good style control, conditioning effect and good feel to the hair. It is beneficial to the consumer having one single product that neutralizes hair by removing the excess alkali from relaxed hair so that hair is not damages at the dame time provide good conditioning effect.

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In response to applicant's argument with respect to unexpected data in the specification none of the claims are limited the unexpected data in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619